

## THE SENATE APPROPRIATIONS COMMITTEE

### Interview #2

Tuesday, August 12, 2003

**RITCHIE:** We stopped last week when you had gone to work for the Appropriations Committee in 1979. I wondered if you tell me about how you got on the Appropriations Committee staff and what your initial responsibilities were, when you were with the Energy and Water Development subcommittee?

**KENNEDY:** Well, Senator Hatfield was the senior Republican on the subcommittee. In fact, he became the senior Republican on that subcommittee upon his appointment to the committee. I'm not sure how that happened, frankly—oh, I have an idea how that happened: there were fewer Republicans on the committee than there were subcommittees, so people moved up quickly in the ranks.

When he first got on the committee, Senator [John] Stennis was the chairman of that subcommittee. Then when Senator [John] McClellan died and Warren Magnuson became chairman, Magnuson kept the chair of the Labor-HEW subcommittee and Stennis left Energy and Water to chair Defense, since he was also chairman of the authorizing committee, and J. Bennett Johnston became chairman of Energy and Water. The two of them, Johnston and Hatfield, served as chairman or ranking, respectively, for something like eighteen years, I think, up until Senator Hatfield in the 104<sup>th</sup> Congress, to help resolve a little internal squabble, elected to surrender Energy and Water and chair Transportation. But we'll get to that later.

In any event, Senator Hatfield was the senior Republican on the subcommittee and as such, in consultation with the ranking Republican on the full committee, Milton Young, he was able to recommend for appointment a staff person. He was first able to do that I want to say sometime probably around '74 or '75. The job was held by a guy by the name of Dave Lohman. In '78, David elected to go home to Oregon and another Hatfield staff person, Tom Imeson, who had been on the Energy Committee, moved downstairs to the Appropriations Committee. He held the job for only about four months when he too decided, as I mentioned last week, to go home to Oregon. And then I was just sort of next in line, I guess.

Senator Hatfield asked me if I would do that and of course I accepted with alacrity. I came over to the subcommittee in January of '79. Of course, the Republicans were in the minority and as such we were not, as minority staff, actively engaged in writing the bill or writing the report. What we did do was pursue and represent the interests of the Republican members of the subcommittee, review all the agency justifications and prepare questions for hearings for both Senator Hatfield and any other Republican member that might want to use them. Typically, the other Republican members of the subcommittee had staff in their own personal offices who would do this stuff for them, but we always had backstop questions in case they needed them.

The Democratic majority clerk of the subcommittee was Proctor Jones, who is certainly somebody I would recommend you get in here for an oral history if you can because Proctor has a lot of experience and a world of stories. Proctor was a great favorite of Senator Stennis'. He had come to the Senate with Richard Russell as a very young man and I guess Proctor was in the Senate at least thirty years. Anyway, he was and is a very intelligent and very colorful guy, from whom I've learned an awful lot. I was blessed with some really outstanding people to work with: Proctor Jones and his longtime assistant David Gwaltney over here in the Senate, and in the House the clerk of the subcommittee of the House was a fellow by the name of Hunter Spillan, who at the time had been on the House Appropriations Committee I would say twenty-five years if not longer. Between the two of them they conducted something of a hazing. Rookies had to go through a certain time of trial and testing to see if you were up to it, whether you were committee material, and whether you were one of them or not. But I seem to have weathered that all right and I learned a terrific amount of committee lore and committee procedure, and the right way to do things, from those two guys.

Appropriations at the time was very much a there's-a-right-way-to-do-it kind of committee. They were very attentive to proper procedure. One of the very first things that I was told to sit down and learn about was Rule 16. You need to know what the proper procedure is when you take these bills to the floor.

The subcommittee itself was very interesting, both in the personalities of its members and the subject matter that it considered. As I said, Mark Hatfield and Bennett Johnston were chair or ranking for a long, long time together and they worked very well together. Senator Stennis was still on the subcommittee. We had folks like Jim McClure

and Henry Bellmon on the Republican side. As the Appropriations Committee continues to be, it was very much a bipartisan operation. I've always said it's very difficult to get into ideological partisan arguments about whether you ought to spend nine million dollars or eleven million dollars. You pretty quickly say: "Ten sounds like a good compromise," and you move on.

The jurisdiction of the subcommittee was very interesting because it ranged from very significant national security issues in the Department of Energy having to do with the manufacture of nuclear weapons to perhaps more mundane but also perhaps more important to the member issues like the annual dredging of a particular port in order to maintain a sufficient depth for commerce to go in and out, which might be only an annual expenditure of a quarter of a million dollars but was real significant to the local community.

The subcommittee deals with hundreds of little projects like that. This practice has discontinued, but in those days we would set aside about six days for hearings every year for public witnesses, local folks interested in these projects were invited to come and testify before the subcommittee. It was often tedious but it was also delightful, because literally people came from all over the country. I remember Richard Petty came once and talked about Randleman Lake down in North Carolina, and why it was important. We'd have folks in from Oregon, there would be folks coming in from Louisiana, from all over the country to talk about principally Corps of Engineers projects. I got a good appreciation of the practical effect of the expenditure of federal dollars. So much of what the Appropriations Committee does it's really kind of hard to get your hands around, these big, massive federal programs that consume vast amount of money, but it's hard to get good definition on what the outcome is. But these were very specific. You could go on field trips and go see these things. The money was spent and this is the result. That was gratifying.

**RITCHIE:** Why did they discontinue those public hearings?

**KENNEDY:** I guess the members felt that it got to be too time-consuming. Senator Johnston had just sat through enough of them, I guess, and decided we don't really need to do this any more. So they kind of faded away.

**RITCHIE:** What kind of issues was Senator Hatfield interested in on that subcommittee?

**KENNEDY:** Well, of course he was vitally interested in what happened along the Columbia River and down the coast of Oregon. There were some major construction projects going on at that time. A second powerhouse was being built at Bonneville Dam, a couple of hundred million dollars worth of work. A third powerhouse was being built at Grand Coulee, which though way upstream in the state of Washington was still part of the Columbia River system, part of Bonneville power and very much of interest to him. At some point there was a new lock, I believe at Bonneville, for passage of barge traffic up and down the Columbia. Along the coast, all down the Oregon coast there are a number of small seaport communities where you have rivers coming out of the Cascades flowing west down to the Pacific. There are all these little basically fishing communities and they've all got port entrances that have to be dredged in order for the traffic to continue. That was an annual effort to get that done. From time to time there were construction projects to worry about there, to build jetties out from the mouth of the river into the ocean to try to maintain that channel, and various disputes with the Corps of Engineers from time to time about the best way to go about that. And there were some interior Corps of Engineers flood control projects which involved dam construction. One of which was on the Jimmy Carter hit list in 1978 when he vetoed the Energy and Water bill and they had to revisit all of that stuff and write a new bill to survive his scrutiny again later.

Those were his local, parochial interests, if you will. Also he was very interested in what the Department of Energy was doing in a positive way when it came to renewable energy, and a not-so-positive way when it came to nuclear energy. Of course, Bennett Johnston was very pro-nuclear energy, so the two of them kind of balanced each other out over the years, they more or less struck a middle ground.

**RITCHIE:** I wondered about that. You've got a senator from Louisiana who's interested obviously in the Mississippi River and in off-shore oil; and then you have a senator from Oregon. Did they defer to each other and say: "In your neck of the woods I'll listen to you if you'll go along with me in my neck of the woods?"

**KENNEDY:** Yes, pretty much everybody on the subcommittee did that. That's not just logrolling. I think because Mark Hatfield worried about the Columbia River he had an appreciation for Bennett Johnson worrying about the Mississippi, and vice versa. They understood that for the economies of the regions they represented, you had to worry about the flow of those rivers and how they were used. Like I say, I think that was true of everyone that got on the subcommittee. They had some appreciation. So, when the two of them took the Energy and Water bill to the floor, I mean it was pretty formidable. Everybody was together. The bill would pass 88 to 12, year in and year out. There would be the various battles on major contentious projects every now and then, the Tenn-Tom, the Tennessee-Tombigbee project down in Mississippi and Alabama, which Senator Stennis was very staunch in defending.

I think one of the reasons why Mark Hatfield and John Stennis were so close was that Hatfield always stood with him on that and Stennis appreciated that. Another reason, of course, and I'm sure you've heard this story. When Senator Stennis was shot outside his house and Mark Hatfield heard about this, he went to the hospital and spent the evening in the hospital fielding calls from people and just sort of stood vigil there with John Stennis.

Anyway, Tennessee-Tombigbee was a contentious project. Another one was the Tellico Dam project on the Tellico River in Tennessee, which was a TVA project—TVA was also in the jurisdiction of the subcommittee. Of course, that was primarily advocated and defended by the senators from Tennessee, principally Jim Sasser, who was on the Appropriations Committee and on the Energy and Water subcommittee. The contention there was that the construction of that dam would endanger the habitat of a little fish called the snail darter. At the time, I was sharing an office with a fellow who did the Agriculture appropriations bill for the then ranking Republican, Senator Bellmon from Oklahoma. The folks in the Midwest had a particular problem with something called a range caterpillar. It was some sort of pest that was eating the wheat and whatever. My colleague, Stephen Kohashi, had a series of vials with formaldehyde in them and each one containing a range caterpillar at some stage of its development.

I want to say this was 1980, because I don't think I would have the temerity to do this in my first year on the committee, but in 1980 when we got ready to go to the floor with the Energy and Water bill and we knew there was going to be another debate on

Tellico, I took one of this vials and put a label on it that said "snail darter." I took it with me to the floor and sure enough we got to the Tellico Dam debate and people were getting up and talking about this snail darter, and I pulled this thing out and handed it to Hatfield. At first, he bit and said, "Really, that's a snail darter?" Eventually I told him the story and he thought that was pretty funny, so throughout the course of the debate various people would wander in and out and Hatfield would wave them over and say, "Look at this. We're going through all of this and look at this fish. Can you believe we're going to all this trouble over this?" They would all say, "That's the ugliest damn thing!" I still have that thing. It's in my desk drawer over at the Capitol. So there was the occasional fun to be had.

**RITCHIE:** You mentioned how Senator Stennis became the chairman of the Defense appropriating subcommittee and he was also the chairman of the Armed Services Committee. You didn't have the chairman of the Energy Committee on your subcommittee. What was the relationship between an Appropriations subcommittee and the authorizing committee like the Energy Committee or the Environment and Public Works Committee?

**KENNEDY:** It was fairly distant, frankly. Well, first of all, as you well know, appropriations is an annual process and the authorization process is not. The Armed Services authorization has become an annual process, but in those days I don't know that it was. It didn't make much difference because Stennis ran one and then he ran the other, so they were in harmony. There certainly was not an annual authorization for the Department of Energy. There were, as there continue to be today, periodic authorizations for the Corps of Engineers and the Bureau of Reclamation. We certainly paid attention to those, if only because of Rule 16, and if only because it gave us a way to say no. If members came with project requests that weren't authorized, we could say, "We're sorry, we can't do that. We're not going to appropriate for something that hasn't been authorized." As far as I can tell, that continues to be the case today, at least when it comes to the water portion of Energy and Water. The only projects they fund are projects that are authorized.

**RITCHIE:** Could you explain a little bit more about Rule 16 and just how it defines that?

**KENNEDY:** Well, I might have to find a rule book around here and refresh my memory, but Rule 16 refers to amendments that are offered to appropriations bills. The rules of the Senate apply to what happens on the floor, so we're talking about when the appropriations bill is on the floor, an amendment that proposes to spend money on something, it should only propose to spend money on something that is authorized by statute, is pursuant to a treaty, is pursuant to a resolution of the Senate having passed in that session of the Senate, is for a purpose requested by the president, that is to say part of his budget request, or it's an amendment moved by the committee itself. So if someone were to come on the floor with an amendment that was not embraced by one of those criteria, then a member could raise a point of order against that appropriation. And from time to time that did happen.

**RITCHIE:** In other words, senators who were not members of the Appropriations Committee and had not been successful in persuading the committee to adopt their provision try then to bring it up on the floor?

**KENNEDY:** Right.

**RITCHIE:** That raises another question about members who aren't on the committee. Obviously the senators who are on the committee look after the interests in their states. How do senators who aren't serving on the Appropriations Committee look after energy and water issues or public works issues that might affect their states?

**KENNEDY:** Well, it's certainly harder, but not impossible. I think it has gotten much harder in recent years. When I first got on the committee, in '79 and '80, the congressional budget process was a very new process. The Budget Act had only been enacted in '74 and the mechanisms only really got started in '75. There were not all the various points of order that are now obtained. And frankly there seemed to be more money to go around. Nowadays, of course, each subcommittee is given an allocation. The budget resolution passes and there's a 302A allocation, an aggregate amount of money that is given to the Appropriations Committee. This is how much in the aggregate Congress has decided the Appropriations Committee will be allowed to spend. Then the committee divides that up amongst its thirteen subcommittees [later reduced to twelve]. It's an allocation of both budget authority and outlays. Any bill reported from the committee that exceeds either the budget authority or outlay allocation is subject, since

1985, since enactment of Gramm-Rudman, it's subject to a 60-vote point of order. Anyone offering an amendment on the floor that would cause that allocation to be exceeded, that amendment is subject to a 60-vote point of order.

It's interesting that Gramm-Rudman was intended to greatly restrain discretionary spending. Gramm-Rudman and the whole process of sequestration is pretty much now ancient history, but what survives is a point of order that greatly empowered the Appropriations Committee to the detriment of the rest of the membership, because now any subcommittee chairman worth his salt is going to write a bill in subcommittee that spends every penny of that allocation. From then on in the process, anybody that wants to add anything has to subtract something. No longer can a senator just come forward and defend and advocate his purpose just on its merit, he also has to find something that the committee has already approved that they are now willing to reverse, and to say, "Well, you're right, yours is better than this." Well, that's not likely to happen, so if you're not a member of the Appropriations Committee and you come to the floor with something, you're going to be offering amendments that say "within available funds," which means who knows if you're going to actually see the expenditure of dollars for that particular purpose.

I think that pre-'85 it was easier for senators who were not on the committee to get attention to their interests. Since the point of order was enacted, and certainly in times of severe fiscal constraint, it's very difficult for someone who is not on the committee. If they can't get in on the ground floor, it's going to be very hard for them down the road.

**RITCHIE:** Now what's the relationship of a subcommittee like Energy and Water Appropriations subcommittee and the equivalent subcommittee on the House side?

**KENNEDY:** Typically, it's very good. Mind you, I've been away from the process for a long time, and lots of things have happened in those ensuing years, but as I said earlier when I first got started I was very fortunate in dealing with our counterparts in the House, because the folks that I dealt with very much believed in the process. If they came to believe that you too believed in the process then you got along swimmingly.

One of the very first things that I learned from those old hands in the House was the importance of the calendar. Every year in the front office of House Appropriations they put up a big handmade calendar that laid out the legislative days that are available. In early spring they'll start putting on the calendar: "In June we're going to do this. These are the bills that we'll move through committee." And it worked that way in those days. You could count on the fact that in June and July the Senate would be considering appropriations bills. When you came back in September you might have one or two to wrap up but the end was in sight.

I would also say that there was no real partisanship between the two chambers. In those days, when I first started, both houses had Democratic majorities, but it never seemed to bother the House Appropriations guys that I was there representing the Republican members of the Senate subcommittee. That just sort of never came up. In 1981, when the Republicans got control of the Senate for the first time in a while and Senator Hatfield was kind enough to ask me to be staff director, very early on I made it a point of going to the House full committee and spending time with those folks. There was never in the six years that I was first staff director, and all that time the House had a Democratic majority, there was never any partisan issue that came up between Mark Hatfield as chairman and Jamie Whitten as chairman in the House or between me and my counterpart, Keith Mainland in House Appropriations.

**RITCHIE:** The House has always interpreted the Constitution to say that it should start appropriations bills first, which has been something of a sore point with the Senate, since the Constitution mentions revenue not appropriations. What practical impact has that had on appropriations bills, if the House starts the process?

**KENNEDY:** The disadvantage is if the House is slow, the Senate is slow. If you do it by regular order. In those days, in the late '70s, early '80s, that was not an issue. The House moved bills and they came to the Senate in a timely manner, the Senate worked its will and we went to conference. They did it differently in those days, too, than they do now. In the late '70s, early '80s, when I was first on the committee, when a bill came from the House to the Senate, we would amend the bill seriatim. That is to say, it wouldn't be one great big substitute amendment. We would only amend that with which we did not agree. If the House sent over a certain number for some particular aspect of the Department of Energy, we thought that was just fine and we left it alone. The beauty

of that was—the practical effect of that was—when you went to conference it was not a conferenceable item. The two houses had agreed. You didn't have to reopen it.

It also made for interesting floor procedure in the Senate, because when the bill would be reported from committee with a whole series of individual committee amendments—and sometimes they could number up into the hundreds—those committee amendments were the pending business and no other amendments could be dealt with outside of unanimous consent, until those had been adopted. And Bennett Johnston loved to do this. He would go to the floor, get the bill up, ask unanimous consent that the committee amendments be considered and agreed to en bloc and be considered as original text for the purpose of further amendment, so that those amendments could be subject to two further amendments, with the exception of the committee amendments appearing on page so-and-so, line so-and-so. He did that many times just so he could have a traffic cop, if you will. So that if a member came with an amendment that he the chairman didn't necessarily agree with, that member couldn't get his amendment offered and pending unless and until this committee amendment had been adopted. If Bennett Johnston didn't want that adopted, it didn't get adopted. He could sort of stave things off. He would agree to set the committee amendment aside for some amendments and not agree with others.

I think this eventually caught up with him, though, because other senators started, when bills would come to the floor they would call into the cloakroom and they would insist that such-and-such a committee amendment not be embraced under this considered and agreed to en bloc thing. And there were times when we couldn't get that en bloc consideration, and we would just start going through them one at a time. "Okay, the question is on the first pending committee amendment."

But that's no longer done. Now the Senate committee will report a House passed appropriations bill with an amendment in the nature of a substitute. So you just have one great big block of text. An interesting thing, to me, about that is that invariably when that is done there is going to be a violation of Rule 16, because another aspect of Rule 16 says you can't legislate in an appropriations bill. Strictly speaking, a rescission is legislation because it's amending something that's already been enacted into law. And minor little word changes, strictly speaking, are legislative in nature. So with practically every appropriations bill that's reported to the Senate now, somebody could stand up and make

a point of order and the whole substitute would fall. Nobody does that because it's kind of nuclear war to do that, but it's there.

**RITCHIE:** It's potential.

**KENNEDY:** It's potential, and it also means that when you get to conference, everything is still in play. I mean, you've got to worry about questions of scope and Rule 28, but as I said earlier, under the serial amendments if the Senate didn't change something then it's not in conference. But now, everything is in play all the way through the process. It seems to me that adds to the burden. There are some practical benefits to doing it with a substitute, but there's some down sides too.

**RITCHIE:** Political scientists, looking back at 1970s and earlier, used to call the Senate Appropriations Committee an "appeals court."

**KENNEDY:** Oh, yeah.

**RITCHIE:** Was that a regular process, that people who were unsatisfied with what the House Appropriations Committee did came over to the Senate to try to rectify that?

**KENNEDY:** Absolutely. In fact, when I first came on the committee we used to have what Proctor Jones called "reclama" hearings. We would actually have a hearing after the House had passed its bill to hear from agencies funded by the bill as to what they liked or didn't like about what the House had done. Now, that's a practice that went away *long* ago, but most definitely people would flock to the committee after House action, expressing jubilation or outrage as to what the House had done. They would appeal to the committee to fix it, and the committee was often happy to do so, because tweaking the House bill offered opportunities for negotiation in conference.

**RITCHIE:** Was there sometimes a tendency for one house to cut because they knew the other house would expand, and vice versa, and you would split the difference when you got to conference?

**KENNEDY:** Certainly. Absolutely. And periodically there are fundamental policy differences. It doesn't happen often, but periodically it does happen. Not just on legislative riders on abortion language, but on actual funding levels. There's a long-running disagreement between the House and Senate Energy and Water subcommittees about funding for the Department of Energy's Yucca Mountain nuclear waste storage facility in Nevada. Of course, in recent years, the senior Democrat on the Energy and Water subcommittee in the Senate has been Harry Reid. Senator Harry Reid and his Nevada colleagues, current and prior, were very much opposed to a national nuclear waste storage site in their backyard. They have fought it for years. In recent years, the House subcommittee chairman, most recently that is Mr. [David] Hobson, fully funds and fully supports what now President [George W.] Bush proposes in funding Yucca Mountain. That has made for a tougher negotiation on Energy and Water than has been customary. And it leads to a little bit of fight in the Senate subcommittee itself, because Senator [Pete] Domenici is very much in favor of Yucca Mountain.

**RITCHIE:** The House Appropriations Committee is a lot bigger, there are 59 House members and the Senate committee has 29 senators. Do the numbers affect conference committee meetings at all?

**KENNEDY:** Um, no. I mean, there are times when it feels like it's awfully cumbersome, I guess, but the subcommittee memberships are not that disparate. The House has bigger subcommittees, but the numbers don't seem to be as overwhelming. There are appropriations measures which are "full committee" bills, supplementals and continuing resolutions, and certainly when you get to these omnibus deals. And typically in the Senate, when it's a full committee measure, the chairman of the committee asks the presiding officer to appoint all the members of the Senate Appropriations Committee to the conference. The House does not do that. They'll appoint the chairs of all the subcommittees involved and then a number of minority members in keeping with the overall ratio of the committee. So they won't even have all the ranking minority members of the affected subcommittees. You'll have a conference with 50 to 52 people, which is manageable.

**RITCHIE:** Since House members tend to have fewer committee assignments, are they more grounded sometimes in the subject matter?

**KENNEDY:** Oh, absolutely.

**RITCHIE:** Is that a problem in conference?

**KENNEDY:** It can be. In my experience, the House Appropriations Committee was very disciplined about every member, every conferee, showing up for every moment of the conference. I'm sure that they are aware that there's an element of intimidation involved in this. You walk into the George Mahon room over there on the House side of the Capitol, first floor, where typically we had a lot of conferences, and you've got sixteen members of House Energy and Water sitting across the table, and it's just Bennett Johnston and Mark Hatfield on the Senate side. Other senators breeze in and out when they feel like it, or when they're called to say, "Your issue is on the table."

Yeah, from time to time there will be a House chairman or ranking minority member who will just be formidable in their knowledge of the particulars of their bill. Sid Yates from Illinois, as chairman of the House Interior Appropriations subcommittee was very much that way. We called him, with some degree of affection, "Iron Pants," because he could just sit there all day long. He met his match, interestingly, in Jim McClure. When Senator McClure was chairman from '81 to '87 the two of them had legendary meetings. McClure prided himself in learning the details of that bill, and he really did. Before the bill went to committee mark up, he would just lock himself up in the office with the subcommittee staff for a couple of days, really, and go through every line of the bill and report, which is very rare for senators to get to that level of detail. But McClure did it and he and Yates would sit there for days and argue back and forth with one another to the great exasperation of all kinds of people, up to and including Mark Hatfield. "Can't you move on?" Because an Energy and Water conference never ran that way.

But, yes, this is an old adage in political science literature, that House members have fewer assignments and tend to be more focused, and I think it's true. An example that is telling to me—I don't know that it would be to a general audience—but when Senator John East died, Representative Jim Broyhill, a Republican from western North Carolina, got appointed to his seat. I remember sitting down in the managers' row in the Senate chamber during consideration of an appropriations bill, and Senator Broyhill who had not—well, I don't remember, I don't think he had served on House Appropriations, but

he may have—Broyhill came over to the managers’ desk and asked for a report so that he could look at the tables that are always printed. In the back of an Appropriations Committee report there is printed something called the “Comparative Statement of Budget Authority,” which is a computer print-out that lists by line everything that is in the bill: what the request was; what the House passed; what the committee recommended; and what the last year’s amount was. Broyhill came over and asked for a report so he could look at it, and he said this: “I want to look at the CSBA.”—the Comparative Statement of Budget Authority. I and the staff person that was sitting there with me thought, “Oh, boy, we’re in trouble! Here’s somebody who knows not only where to look but what to ask for.” To me that was illustrative that the House guys get down into the weeds more than the senators do.

**RITCHIE:** Now, when you mentioned that Senator Hatfield and Senator Johnston might be the only senators there at a conference, I presume they had the proxies for all the other senators on their subcommittee.

**KENNEDY:** Oh, yes indeed.

**RITCHIE:** So that gave them equal weight with the House, if the Senate can stick together on issues.

**KENNEDY:** Oh, yeah. Absolutely. In fact, they rarely had to exercise proxies in conference. They would just say, “This is the Senate’s position. We’re not yielding.”

**RITCHIE:** Are there issues in which they might say, “There’s no chance that this would pass if we go back to the Senate with something like that”?

**KENNEDY:** That rarely occurred. In fact, in my tenure that never occurred, because in my tenure you didn’t have these intractable policy differences between the two houses. It’s an extension of what I said earlier, you can’t get into ideological fights about whether you should spend X or Y. It’s just not political fundamentalism.

Actually, in those days there was a mechanism for resolving difficult issues—something short of intractable differences. When we were using the process of numbered amendments, from time to time the conferees would be in what was called

“true disagreement.” The House simply would not agree with the Senate, or vice versa, on a particular Senate amendment, either that Senate amendment might have been that we had stricken some House language that they really liked, and in those situations the conferees could agree to report that particular amendment in true disagreement. What that meant was the House managers would take the conference report back to the House floor and the first action would be to adopt the conference report, and then you had to deal with any amendments remaining in disagreement. That process then enabled the House, and subsequently the Senate, to take a separate vote as a body on this one issue. That amendment remaining in disagreement was also subject to further amendment, also giving each body an opportunity to say: “Well, maybe if we modify this a little bit those guys will agree.”

I might say that this process was not followed solely on matters where there was true disagreement, there was also matters that were reported in technical disagreement. That is to say, from time to time the conferees would agree on actually a higher number than either body had passed, or a lower number than either body had passed, and therefore that agreement was technically outside of the scope of conference. In those days, the House Rules Committee was very vigilant in enforcing the rules of the House as it pertained to appropriations bills. So if a matter such as that out of scope were to be included in the body of the conference report, then the Rules Committee would not have reported a rule protecting that from a point of order on the House floor, and therefore the conference report would have been subject to a point of order on the House floor. We referred to those matters as amendments in technical disagreement. That is to say, the conferees themselves were not in dispute that that was what the number ought to be, it was that it was technically subject to a point of order in the House. So rather than endanger the entire conference report, they reported that amendment in technical disagreement, and after adopting the conference report the managers on the part of the House would make a separate motion to move to concur in this amendment, and it would pass. If somebody wanted to make a point of order, they could, but nobody did. But the point is you're protecting the corpus.

Now that practice has gone away, in part because the Senate no longer does numbered amendments, separate amendments, it's one big substitute. Another reason why it went away was that senators in particular got frustrated that oftentimes major appropriations bills would have dozens of these amendments remaining in disagreement,

technical disagreement though they may be. When the conference report with these amendments trailing along came over from the House, you adopted the conference report and then you had to deal with all these amendments remaining in disagreement. Just like any other series of amendments, you could adopt them en bloc if you could get unanimous consent; if not you had to deal with them individually. And all of them were subject to further amendment. Some clever senators figured out, “Well, if they’re still subject to further amendment, I can continue the argument. We’ll just amend again.”

**RITCHIE:** Then would it have to go back to the House, if the Senate amended it?

**KENNEDY:** Right. I need to correct myself here: Not all amendments in disagreement still came to the Senate. It was only amendments in disagreement that were further amended by the House. So they had a big pile of them to deal with, and we got a smaller pile to deal with.

There’s a practice in appropriations called “read out.” After the members conclude the conference, the clerks of the subcommittees, both majority and minority, will sit there at the table and they will go through the bill and annotate the disposition of all issues. When we were doing individual amendments, we would annotate the disposition of each amendment. It was this priestly like activity, it really was. It was this ritual of the committee. One of the clerks of the other would just read aloud to all of those in the room “Amendment number one.” The disposition of the amendment was either H.R., House Recedes, or S.R., Senate Recedes. HWA, which was House recedes with an amendment, that is to say that’s a classic split the difference between the two. Disagree, which would have been the rare instance of true disagreement. Disagree, Recede, and Concur, in that the conferees agree but there’s a technical problem, and the House managers will recommend that the House recede and concur with the Senate amendment, which technically is in violation of the House rules, which is why we reported it. And finally, Disagree, Recede and Concur with an Amendment, which was a DRCWA.

So we’d go through the bill, write all this down. The staffs would go back to their respective offices and write. The Senate charge was to write in essence the bill language of what had been agreed to, and the House charge was to write in essence the report language, which when you get to the conference stage is the statement of managers. After

some period of time, however long that took, then you get back in the room and literally read every word aloud of both bill and report. There was a process of making dots. You'd have these conference documents in front of you. You've passed out six copies of bill language and six copies of report language for individuals to read and follow along. There's a designated reader and he'll say, "Amendment number one, H.R." Everybody makes a little dot. The forms are printed up so that in these various categories you put Amendment number one in the category of H.R.'s. With the number two pencil you would make a little dot over the number of the amendment listed in that form.

After the first reading of the entire legislation, you would count dots. How many H.R.'s? And be sure that everybody has got the same number of H.R.'s, and the same number of S.R.'s, and the same number of HWA's. It sounds utterly ridiculous, and it was grindingly tedious, but every one of the old school folks just lived and died by that process. You could get your head taken off in that read out if you started goofing off. This was deadly serious business. My House mentors would always say, "When you get right down to it, a conference report on an appropriations bill is instruction to the printer. Here's your basic text, and here are the amendments thereto, and we're telling him where to put those amendments and what those amendments are. If you screw up in these instructions, that could be a billion-dollar mistake. So let's be careful." And people were extraordinarily respectful of that.

It was something that the members never participated in. In fact, I remember read outs—again over in the Mahon room of House Appropriations—where the door would open and some member would stick his head in. We'd just stop and the House clerk would look at them like: "When you leave, we can resume business." It was fun stuff, which no one outside the fraternity, I think, can really appreciate, but it was a great exercise in trying to be attentive to detail and being sure you've got it right. The senators often got extraordinarily impatient with this, because until we finished this process you couldn't file. "When are you going to file?" "Well, we've got to do read out." "What is read out?" "Well, actually, we read every word of the bill and the report." "Why do you do that?" But eventually I think they all became respectful of it. I have no idea what happens in that process now. They don't do dots anymore. I know that.

**RITCHIE:** You keep mentioning the Mahon room, and there was a story a decade earlier when all of the conferences were always held on the Senate side, because

the Senate was the last body to act on every appropriations bill. There was a point when the chairmen of the Senate and House Appropriations committees got into a fight as to where to hold the conference committees. By the time you came along, were they alternating back and forth between the House and Senate?

**KENNEDY:** Yes. We'd either use the Mahon room or we'd use S-128 [Senate Appropriations Committee room]. The story I had heard was that conferences used to be held in the Old Senate Chamber—that's as far as the House would come.

**RITCHIE:** Then they refused to go even that far.

**KENNEDY:** And of course the conferences were *always* in the Capitol. We didn't go to the office buildings. They were always in some room in the Capitol.

**RITCHIE:** One of the reasons why the Senate was holding out wasn't just to be snooty about it, but they wanted the opportunity to perhaps begin some appropriations bills and not have to wait for the House to act. Did they ever resolve that? Does the Senate ever begin work on appropriations at times before the House acts?

**KENNEDY:** Oh, certainly. In my first tenure as staff director, it's my recollection that Senate actually passed a Senate-originated appropriations bill. It was the Foreign Assistance/Foreign Operations appropriations bill. I think we actually passed one. Of course, the House didn't even let the Senate messenger in the door. Now, from the mid-'90s onward, under Senator [Ted] Stevens' chairmanship and then I do believe Senator [Robert C.] Byrd did it as well when he was chair again briefly there in 2001-2002, the Senate committee reports original bills, S numbered bills. It has taken them all the way to third reading, and then just holds them at the desk awaiting arrival of the House measure and then makes it a substitute therefore.

Certainly the case can be made that that expedites the process, because typically if you wait for the House bill to have subcommittee and then full committee and then two-day rule if you have a written report for consideration on the floor, that's a week to ten days before you can get all that done. But reporting an original bill denies you the opportunity, unless you have real good intelligence about what the House is going to do, it denies you the opportunity to fiddle with what the House has done, to set up negotiating

strategies. It certainly denies you the opportunity to be the appeals court that we talked about earlier.

**RITCHIE:** Can you tell me, what's the relationship between a subcommittee like the Energy and Water subcommittee and the full committee? Are you a wholly autonomous unit of the Appropriations Committee or is there more negotiation when it goes from the subcommittee up to the full committee?

**KENNEDY:** That sort of ebbs and flows. As with so many things around here, it depends on the personalities involved. A subcommittee is definitely not autonomous. It is not autonomous in its work product recommendations. It is not autonomous in its staffing. Subcommittees don't have their own appropriations. Subcommittees don't have their own individual budgets. The subcommittee chairman does not have exclusive staff appointment authority. It's done in consultation with the full committee chair. But having said all of that, the full committee ratifies what the subcommittee has done. You don't see significant changes to a subcommittee's recommendations in a full committee mark up. Now, that's certainly in no small measure because the subcommittee has anticipated the requirements of all the other members of the full committee and has tried to accommodate those. So if you get to the full committee level, people are happy.

That doesn't always happen. This year when the full committee marked up the FY '04 Defense appropriations bill, Senator [Larry] Craig had a sharp disagreement with the subcommittee's recommendations on an issue affecting Idaho, and took it to a roll call vote. Now, he lost that roll call vote 28 to 1. But typically the full committee just takes subcommittee recommendations and endorses them and moves on. Again, that happens because there's a great deal of communication going on within the committee and between the full committee and the subcommittee. It's not happening in a vacuum.

**RITCHIE:** One other question about the '70s, I know we're getting close to lunchtime, but you mentioned earlier about Jimmy Carter's veto of that water bill. A lot of people up here say that soured the waters between the Carter administration and the Congress. You joined the subcommittee staff right after that. Were there still repercussions from that? Was that a big mistake on his part to have done that?

**KENNEDY:** Well, I was pretty far down in the echelons here, so I can't say that I've got any direct knowledge about that or stories to tell, but the short answer is yes. That made a lot of people angry. It disappointed a lot of people. For some it confirmed that he didn't know how the place operated. Some people thought it was silly. I would have to say in my mind it really more than anything it reinforced a notion prevailing in a lot of people's minds that this guy was not a good legislator. He did not appreciate the legislative process. There was a whole lot of talk about: "This ain't the Georgia legislature!"

**RITCHIE:** Well, as governor he had succeeded by going around the Georgia legislature, so I guess he assumed you do that with Congress as well.

**KENNEDY:** Right. That's a little harder to do.

**RITCHIE:** I think we should stop before we start the 1980s, which is a whole other story. But do you think that we've covered the big issues for the 1970s when you first came here?

**KENNEDY:** Oh, certainly. As you can tell, I'm very much old school when it comes to the process. Perhaps the greatest thing about working on appropriations was that sense of regular order, that you were doing things a certain way and that had been done that way for a long time. It was all part of a tradition that people were proud to be a part of.

**RITCHIE:** Well, very good. I'll look forward to talking about how things began to change over time as well!

**End of the Second Interview**